granted in the Court of Appeal. That case is the primary authority and I do not consider that earlier cases are of any assistance. The difficulty is to ascertain what limits are to be placed on the exercise of that right.

The trial judge in the present case set out two:—

"(a) that the agent is a person to whom the other partners cannot reasonably object.

(b) that the right of inspection is not exercised unfairly or to the detriment of the firm."

With this, so far as it goes, I think no one would disagree. Both conditions are satisfied in the present case. But it has been argued on behalf of the defendant that the right is subject to a further qualification viz. that there should be a reasonable necessity for employing an agent, which means in other words that the partner who desires to employ an agent should be unable to make an effective examination by himself.

Here the plaintiff is a gentleman well acquainted with the workings of Chinese mining kongsis and he would presumably understand the books of the firm. Is this a reason why the relief he asks for should be refused? It is necessary to examine the basis for the decision in *Bevan vs. Webb*. The judgments appear to be based on two grounds, first the right of a person to do by an agent what he can do by himself, secondly the inability of the plaintiffs in that case who had no knowledge of the business of the partnership to understand the accounts of the firm without assistance. The latter ground does not exist in the present case. Is the former ground then sufficient by itself or must the Plaintiff show some special reason why the employment of an accountant is necessary?

In my opinion the Courts should be reluctant to impose restrictions on the way people exercise their rights. I consider that the proper person to decide whether an accountant is necessary is the Plaintiff himself, who is liable personally if the firm should prove insolvent. In any business there are questions which depend not on mere book-keeping but on matters which belong to accountants rather than book-keepers, and even in very small concerns the assistance of an accountant is necessary or at least desirable. It should be noted that there does not appear to have been any outside audit.

For these reasons I consider that the order appealed against was correct and the appeal should be dismissed. Another point was raised namely that the order was nugatory in that Mr. Grenier the accountant named in the order knows no Chinese and in consequence would be unable to examine the books. I think that this question is really one of the interpretation of the order.

My own view is that the appointment of a professional accountant would imply, as in the case of a solicitor, the employment of clerks and other subordinates in the usual course of business. But even if the order were limited to Mr. Grenier personally, I think that the order would not be nugatory as the Plaintiff himself would undoubtedly be entitled to accompany Mr. Grenier and do the necessary interpretation.

Appeal dismissed.

[APPELLATE CRIMINAL JURISDICTION]

MURRAY-AYNSLEY, J.

August 1, 1939.

PUBLIC PROSECUTOR v. DRIS BIN TAIB.

(PERAK MAGISTRATE'S CRIMINAL APPEAL No. 55 of 1939)

Road Traffic Enactment No. 17 of 1937, Ss. 80 (i), 113 (2) (b), 118 (i) (a)—using private car as stage carriage without licence—evidence of carriage of passengers—presumption—acquittal of accused without calling on defence—duty of Magistrate to call on defence.

Upon a charge under Section 80 (i) of the Road Traffic Enactment of using a private car as a stage carriage without a licence an offence punishable under Section 118 (i) (a) of the Enactment, the evidence of the prosecution established that there were four passengers in the car but the Magistrate acquitted the accused without calling upon him to enter his defence.

Held, that once it had been established by uncontroverted evidence that there were passengers in the car a presumption arose under Section 113 (2) of the Road Traffic Enactment and that the Magistrate, inasmuch as there was evidence against the accused to be considered, should have called on the defence.

MAGISTRATE'S CRIMINAL APPEAL.

The accused in this case was charged on the 13th June, 1939, with using a private motor car as a stage carriage without a licence in that behalf, an offence under section 80 (i) and punishable under section 118 (i) (a) of the Road Traffic Enactment No. 17 of 1937.

At the trial only two witnesses were called by the prosecution. The first a driver of an Omnibus Company, deposed that four Malays asked for a taxi to go to Kuala Kangsar and had already seated themselves in the taxi. Suddenly the accused came with his

motor car. After a conversation between accused and the four Malays the former took them in his car to their place of destination. Later he (first witness) made a report at the Lenggong Police Station. The second witness, a police corporal, said that he received a telephone message from Lenggong asking him to stop a certain car plying for hire. As a result he came to Kati and stopped the said car and found there were four Malay passengers in it.

At the conclusion of the case for the prosecution the Magistrate, Lenggong, found that there was no case for the accused to answer and acquitted and discharged him.

The Public Prosecutor lodged an appeal against this finding mainly on the ground that the Magistrate ignored the provisions of section 113 (2) (b) of the Road Traffic Enactment, 1937, and that the Magistrate should have called on the defence. The appeal was allowed by the Judge who reversed the order of acquittal in the Summons case and ordered that the case be sent for a new trial before another Magistrate.

T. V. A. Brodie, Assistant Legal Adviser, for Public Prosecutor.

Respondent in person.

Murray-Aynsley, J.—In this case the Magistrate seems to have overlooked the presumptions created by Sec. 113 (2) of Enactment 17 of 1937. By reason of that Enactment there was evidence against the Respondent to be considered—indeed the principal fact alleged, that there were passengers in the car, does not appear to have been in issue. In these circumstances the defence should have been called on.

There must be a new trial before another Magistrate.

New trial ordered.

[APPELLATE CIVIL JURISDICTION]

RAJA MUSA, Ag. J.

July 20, 1939.

TEH BINTI CHIK

v.

KELSOM BINTI HAJI ABAS.

(KUANTAN CIVIL APPEAL No. 1 of 1939)

Probate and Administration Enactment, 1920, s. 179—joint cultivation of husband's property by husband and wife—death of husband—distribution.

KHA (f) and ABC (m) were married at Beserah in Pahang in or about 1928. Prior to the marriage ABC was possessed of three pieces of land two of which were at that time practically uncultivated.

Husband and wife cultivated and planted these two pieces of land by their joint labour.

On the death of ABC, KHA claimed that before the inheritance was distributed a share in each of these pieces should be allotted to her as "harta sepencharian."

Held, on appeal, that since the property had been acquired prior to marriage it could not be "harta sepencharian" but that either spouse could claim "upah" for work done on the other's property.

APPEAL from decision of Collector of Land Revenue in Distribution.

Appellant appeared by her Attorney Omar bin Awang.

Respondent in person.

Cur. Adv. Vult.

Raja Musa, Ag. J.—I order that this matter be referred back to a different Collector for retrial.

"Harta Sepencharian" is only applicable to property acquired during marriage and not to property acquired before marriage.

Where property has been acquired before marriage and either spouse has put in money or labour to that property Harta Sepencharian does not apply but either spouse is entitled to claim what is known as "Upah" which is remuneration for work done.

This matter is remitted back to the Collector for him to ascertain whether or not the Respondent is entitled to claim "Upah" and if so how much.

No costs of the appeal.

Case remitted back.

(REVISIONAL CRIMINAL JURISDICTION)

June 28, 1939.

POYSER, C.J.

RE MOHAMED MISKIN SON OF KADER BACHA.

(SABAK BERNAM CRIMINAL CASE No. 48 of 1939)

Penal Code, S. 431A—mischief—plea of guilty—conviction—ingredients of offence not explained to accused on pleading guilty—irregularity.

An accused pleaded guilty to a charge of causing mischief by cutting a cable belonging to the Posts and Telegraphs Department and was convicted and fined $25. At the time that the accused pleaded guilty the Magistrate did not explain to him the legal position with regard to the charge. On revision by the Supreme Court:—

Held, that when the accused pleaded guilty his statement was in effect an admission that he was responsible for the cutting of the cable and there was no indication in the statement that he intended to cut